Office-Supreme Court, U.S.
FILED
AUG 5 1981
ALEXANDER L. STEVAS,
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No. 80-2104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

BENJAMIN WARD, individually and as Commissioner of Correctional Services, JANICE WARNE, individually and as Superintendent of Bedford Hills Correctional Facility, and PHYLLIS JOAN CURRY, individually and as Superintendent of Bedford Hills Correctional Facility,

Petitioners,

—against—

ELIZABETH POWELL, DALREE MAPP, KATHERINE PURRINGTON, ALTHEA MCDANIELS, PAULA HERBERT, CYNDI REED, and MARGARET GATLING, on Behalf of Themselves and all Others Similarly Situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Dated: July 30, 1981

Questions Presented

Does due process require that Spanish speaking prisoners who cannot read or understand English be given notices and statements in Spanish?*

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* Respondents' statement of this question varies from petitioners' statement of their third question in order to accurately reflect the decision below.

There are no grounds for the court to review the first, second or fourth questions presented by petitioners. These issues were made final by a Court of Appeals decision dated September 17, 1976, and the time for an application for review of said questions has expired. 28 U.S.C. § 2101(c).

Furthermore, questions one, two and four do not arise in the record as the involved issues were not raised before or considered by the Court of Appeals. See discussion *infra*. Respondents answer all of petitioners' question even though they are not properly before this Court.

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IN THE

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OCTOBER TERM, 1980

No. 80-2104

BENJAMIN WARD, individually and as Commissioner of Correctional Services, JANICE WARNE, individually and as Superintendent of Bedford Hills Correctional Facility, and PHYLLIS JOAN CURRY, individually and as Superintendent of Bedford Hills Correctional Facility,

Petitioners,

—against—

ELIZABETH POWELL, DALREE MAPP, KATHERINE PURRINGTON, ALTHEA MCDANIELS, PAULA HERBERT, CYNDI REED, and MARGARET GATLING, on Behalf of Themselves and all Others Similarly Situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

Opinions Below

The opinion of the Court of Appeals below is reported at 643 F.2d 924 and is reproduced at Petitioners' Appendix ("Pet. App.") 3-21. The opinion of the United States District Court for the Southern District of New York which was thus affirmed is reported at 487 F. Supp. 917 and reproduced at Pet. App. 27-70. The opinion on the preliminary injunction is reported at

392 F. Supp. 628, reproduced at Pet. App. 82-96, affirmed as modified, 542 F.2d 101, reproduced at Pet. App. 73-79.

Jurisdiction

Petitioners incorrectly state the basis of this Court's jurisdiction to be 28 U.S.C. § 1257(3). As review is sought of a decision of the Court of Appeals, jurisdiction is conferred on this Court by 28 U.S.C. § 1254(1).

Furthermore, those questions presented by the petition, numbered one, two and four, which seek review of the decision of the Court of Appeals filed on Spetember 16, 1976, are untimely and barred by 28 U.S.C. § 2101(c).

Constitutional Provision Involved

This case involves the first section of the Fourteenth Amendment of the Constitution of the United States, which provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law;* nor deny to any person within its jurisdiction the equal protection of the law." (Emphasis added.)

Statement of the Case

In October 1974, respondents, all prisoners at the New York State prison for women known as Bedford Hills Correctional Facility ("Bedford Hills"), commenced this action pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983 and the Due Process Clause of the Fourteenth Amendment. Respondents sought declaratory and injunctive relief relating to disciplinary proceedings conducted in violation of the due process standards set forth by this Court in *Wolff v. McDonnell,* 418 U.S. 539 (1974). The District Court for the Southern District of New York found substantial violations of respondents' due process rights and that injunctive relief was warranted (392 F. Supp. 628, Pet. App. 82). On June 23, 1975, the District Court entered a preliminary injunction which specified the procedural safeguards to be afforded any prisoner at Bedford Hills who was subject to a disciplinary proceeding which might result in solitary confinement (Pet. App. 80). The decision and order determined the merits of respondents' claims, and provided for no further hearings on the issue. For all purposes, the order constituted a final disposition of the case. Petitioners' request on appeal for modification of two provisions of the order was granted, and the Court of Appeals for the Second Circuit otherwise affirmed the 1975 order, 542 F.2d 101 (Pet. App. 73). No further appeal was sought and the preliminary injunction remained in effect.

In December of 1976, three members of the plaintiff class (respondents) moved to hold the superintendent of Bedford Hills in contempt for failing to comply with the lower Court's 1975 order. The District Court found that the order had been violated and ordered the files of the three prisoners expunged of any reference to the involved disciplinary charge. 74 Civ. 4628, June 24, 1977 (order).

In 1979, a motion for contempt and other related relief was made on behalf of the respondents as a class, and the District Court held several days of hearings and conducted an extensive

review of petitioners' disciplinary procedures at Bedford Hills. The District Court, almost five years after commencement of the action, again found widespread violations of the procedural requirements set forth in *Wolff v. McDonnell, supra,* and failure to comply "in significant respects with virtually every provision" of its 1975 Order. (487 F. Supp. at 933, Pet. App. 61). The lower Court found that petitioners had strained both the language and intent of the order, and had in fact adopted procedures that contravened the provisions of the order. (*Id.* at 934, Pet. App. 62). The District Court found the petitioners to be in contempt, and ordered the expungement of disciplinary records, the imposition of a fine if compliance was not met, and the appointment of a Special Master to monitor future compliance with the Court's orders. (Pet. App. 22-26). The Court entered a permanent injunction against petitioners, adding to the 1975 Order a provision specifying that non-English speaking prisoners who read Spanish be given the required notices and statements in Spanish. *Id.* Petitioners appealed the order of contempt and other related relief largely on the basis of their interpretations of the various provisions of the 1975 Order, claiming that the 1975 Order was not sufficiently clear to support a finding of contempt. The Court of Appeals found that the 1975 Order was unambiguous in its meaning, noting that the petitioners' interpretations of the 1975 Order had been "charitably described by the District Court as 'grammatical gymnastics.' " (643 F.2d at 932, Pet. App. 15). The Court below held that the evidence supported the findings of the District Court and that the relief granted was within the bounds of the District Court's discretion (*Id.* at 924, Pet. App. 3).

Subsequent to the rulings below, and after hearings conducted by the Special Master, the parties agreed to a Stipulation and Order which was entered on March 4, 1981, which further detailed the procedures to be followed at Bedford Hills, provided for the preparation of procedural manuals, and established a settlement fund in lieu of a contempt fine for petitioners' non-compliance with the Court orders of 1975 and 1980. 74 Civ. 4628, March 4, 1981 (order).

Reasons for Denying the Writ

Since 1975, Respondents have attempted to halt petitioners' constitutionally-violative conduct in disciplinary proceedings at Bedford Hills. Petitioners now are attempting to relitigate before this Court issues which were finally determined six years ago in the lower Court. Their application for review is untimely. As demonstrated herein, the questions raised were not presented below and, in any case, are without merit. The public interest would best be served by the termination of this litigation.

A.*

Petitioners question that part of the ruling below which required that a written statement of reasons be provided whenever a request for a witness at a disciplinary hearing is denied. This procedural safeguard, first mandated in the 1975 Order of the District Court (Pet. App. 80), has not, before this petition, been challenged. (*See* the "questions presented" by petitioners in the briefs to the Court of Appeals in 1976 and 1980 in this case, Appendices A & B). As this question is not presented by the record, this application for its review must be denied. *Adickes v. Kress & Co.*, 398 U.S. 144, 147, n.2 (1969); *United States v. Ortiz*, 422 U.S. 891, 898 (1974); *Tyrrell v. District of Columbia*, 243 U.S. 1 (1916).

Although petitioners' question was not decided, even had it been, it would not merit review. Contrary to petitioners' assertions, the ruling below is not "clear error under *Wolff v. McDonnell*," and is not in conflict with decisions by this Court. Furthermore, in view of the evidence presented, the district court was correct in requiring the involved notices to safeguard minimum due process.

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* Respondents follow the order of arguments as presented in the petition.

In *Wolff v. McDonnell*, 418 U.S. at 566, this Court suggested that "it would be useful for the Committee to state its reasons for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individual cases," but refrained from finding the statements to be constitutionally mandated *"at least on the record made in this case."* (Emphasis added). Instead, the court stated the permitted exceptions to the general rule that a prisoner has a right to call witnesses in his or her defense, and left any denial of this right to the discretion of prison officials. (*Id.*)

Here, where there was substantial evidence that prison officials had abused their discretion in denying prisoners the right to witnesses, the record fully supported a finding that written reasons for a denial were required. Prior to this case, in a similar case involving disciplinary proceedings at the same prison, petitioners had conceded that *Wolff* procedures must be followed. *Crooks v. Warne*, 74 Civ. 2351 (S.D.N.Y. 1974), Slip Op. at 16, 516 F.2d 837 (2d Cir. 1975). Nevertheless, petitioners admitted in this case, that, as a blanket rule, they did not allow witnesses at disciplinary proceedings. (392 F. Supp. at 631, Pet. App. 91-93). In such a situation, it was correct for the District Court to require a written statement of reasons for the denial of witnesses in order to safeguard the right of respondents to call witnesses. *See Carter v. Jury Commission*, 396 U.S. 320 (1970). The necessity of this provision was further evidenced by the lower Court's findings that nearly five years later, petitioners continued to unconstitutionally deny respondents their right to witnesses, (487 F. Supp. at 926-929, Pet. App. 45-51), and had even uniformly failed to comply with the Court's order to provide statements of reasons for denials. (487 F. Supp. at 929-930, Pet. App. 51; 643 F.2d at 929, 933, Pet. App. 10, 17).

This Court's decision in *Baxter v. Palmigiano*, 425 U.S. 308 (1976), cited by petitioners in their argument, is not on point. In that case, the Court of Appeals for the Ninth Circuit had required prison authorities to "provide reasons in writing to inmates denied *the privilege to cross-examine or confront*

witnesses against them in disciplinary proceedings." (Emphasis added, *Id.* at 322). This court in *Wolff* clearly distinguished the right to call witnesses from confrontation and cross-examination of witnesses, the issue decided in *Baxter,* but not addressed in this case. Here the respondents were seeking enforcement only of their clearly established, constitutional *right* to call witnesses in their defense. (*Wolff v. McDonnell,* 418 U.S. at 565-566).

Respondents submit that petitioners question, not presented below, raises no issue of conflict with the decisions of this Court.

B.

Petitioners present here for the first time the question of whether prisoners have a due process right to be afforded a disciplinary hearing within seven days of being placed in solitary confinement. This procedural safeguard, set forth in the 1975 Order of the District Court, was challenged by petitioners in the Court of Appeals in 1976 only for its lack of an exception for truly exigent circumstances, an exception accordingly added to the order. (542 F.2d at 103, Pet. App. 72, 78-79).* In their appeal below of the 1980 Order of contempt, petitioners did not question the inmate's right to have a hearing within seven days, but argued that this did not mean the hearing must be completed within seven days.** (See "questions presented", App. B). Review of this question is improperly sought by this petition and must be denied. *Adickes v. Kress & Co., supra; United States v. Ortiz, supra; Tyrrell v. District of Columbia, supra.*

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* Petitioners' reasons for not appealing the District Court order are not relevant. For whatever reason, the issue has not heretofore been urged for review. See the "questions presented" by petitioners' briefs to the Court of Appeals in both 1976 and 1980. Appendices A and B.

** The Court of Appeals rejected this interpretation and found the provision to be unambiguous. (643 F.2d at 932, Pet. App. 16).

Even had this question been presented below, it nevertheless is not one which merits review. Contrary to petitioners' contentions, the ruling below is in harmony with principles stated by this Court, does not conflict with rulings of other Circuits, and is an accurate and fair interpretation of the procedural safeguards required on the record made in this case.

It is settled law that the imposition of solitary confinement "represents a major change in the conditions of confinement" and constitutes a deprivation of liberty requiring minimum procedural safeguards. *Wolff v. McDonnell,* 418 U.S. at 571, n.19;* *Baxter v. Palmigiano, supra.* An essential element of due process is a prompt hearing and determination, which should normally precede any deprivation of a protected liberty (*Armstrong v. Manzo,* 380 U.S. 545 (1965); *Goldberg v. Kelly,* 397 U.S. 267 (1970)). However, as the Court below recognized, "prison officials may confine inmates without a hearing . . . as long as a hearing follows as soon as practicable." (487 F. Supp. at 932, Pet. App. 57, n.13).

In this case, the District Court required that the hearings be held within seven days of such confinement in order to prevent the recurrence of the many instances of prolonged segregation prior to a disciplinary hearing (392 F. Supp. at 632, Pet. App. 89; see also 542 F.2d at 103, Pet. App. 78).** Upon respondents' motion for contempt, the District Court found that prisoners continued to be held in isolation for *"significant periods of time"* before being offered a hearing, and stated (487 F. Supp. at 932, Pet. App. 57):

> The order, as modified, provides prison officials with the flexibility necessary to deal with unusual or emergency

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* The issue of extended periods of solitary confinement without a hearing was not reached in *Wolff,* where the plaintiff's challenge arose from a loss of good time credits.

** The District Court was correct in its authority to mandate a time limitation as a remedy to constitutional infirmities. See *Hutto v. Finney,* 437 U.S. 678 (1978) in which this Court upheld a 30 day limitation on solitary confinement because of recurring Eight Amendment violations in the involved Arkansas prison.

> situations, and still protect inmates' due process rights. *It becomes particularly important to ensure swift disposition of cases where the inmate has been confined pending a determination in light of the practice at Bedford Hills of fairly routinely confining inmates following incidents leading to disciplinary proceedings.* (Emphasis added).

Contrary to petitioners' assertions, the ruling below is, in principle, supported by this Court's ruling in *Morrissey v. Brewer,* 408 U.S. 471, at 485 (1972) which held that a parole revocation preliminary hearing, similar in its procedural safeguards to a prison disciplinary hearing, must be afforded "as promptly as convenient" after arrest. In his concurring opinion, Justice Brennan interpreted this finding to require "a preliminary hearing *at the time of arrest*" (emphasis added) (*Id.* at 490).

Furthermore, the ruling below raises no conflict with another Circuit. The case cited by petitioner to support this contention, *U.S. ex rel. Curtis Houston v. Warden, Stateville Correctional Center,* 635 F.2d 656 (1980), is not on point. In that case, the prisoner was not in solitary confinement pending his hearing and thus could show no harm from his hearing being held more than eight days after the involved incident.

Although the question presented may be novel to this Court, respondents submit that there is no reason, at this time, for its consideration.

C.

Petitioners seek review of the ruling below that Spanish-speaking prisoners at Bedford Hills Correctional Facility who cannot read or understand English be given constitutionally-mandated notices and statements written in Spanish. They contend that the petition for writ should be granted on the basis that the ruling is 1) not supported by this Court's decision in *Wolff v. McDonnell,* and 2) the District Court had no evidentiary basis to consider the question.

Petitioners' first challenge raises an issue for the first time and one which was not considered by the Court of Appeals.* As such, it is not properly presented for consideration in the petition for a writ of certiorari. *Adickes v. Kress & Co., supra; United States v. Ortiz, supra; Tyrrell v. District of Columbia, supra.*

Even had the question been decided, it nevertheless would not merit review, as the requirement of Spanish language notices is in harmony with this Court's decision in *Wolff.* Petitioners contend that a Spanish-speaking inmate is like an illiterate prisoner, and should be free to seek assistance from a bilingual staff member or prisoner, but has no right to notices written in Spanish. The District Court correctly concluded that, while the *dicta* in *Wolff v. McDonnell,* 418 U.S. at 570, concerning an illiterate prisoner's right to assistance was "instructive," *Wolff* did not address the question of what written notice is required for a non-English speaking prisoner who can read and understand Spanish (487 F. Supp. at 932, Pet. App. 58). However, this Court did mandate in *Wolff v. McDonnell,* 418 U.S. at 563-565, that a *written* notice of the disciplinary charges and a *written* statement of the evidence relied upon and the reasons for any disciplinary action be given the prisoner. The Court specifically held that oral notices were constitutionally defective, and that without notices *in writing,* the accused prisoner would suffer "severe disadvantage" in his or her ability to present a defense both to the charges at the hearing and against the many collateral effects of prison discipline. *Id.* A prisoner who can read Spanish, but not English, is not in the same category as someone who is illiterate, and is entitled to receive comprehensible written notices. The lower Court's ruling on the question is in har-

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* "Defendants have challenged . . . this issue only on the ground that the court lacked jurisdiction to order this clarification, contending that no plaintiff was, in fact, illiterate in English." (643 F.2d at 930, Pet. App. 11, n.6). See also "questions presented" below, Appendix B.

mony with *Wolff* and merely serves to enforce the due process standards set forth in that case.*

Prisoners' second argument, that the ruling was not supported by the record, was dismissed by the Court of Appeals, which, with the entire record before it, found "that the evidence was sufficient to support the clarification" of the 1975 Order. (643 F.2d at 930, Pet. App. 11). Petitioners' contention that the named class representatives must suffer the alleged injury is unsupported by the two cases which are cited and misquoted in the petition. In both cases, *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 40 n.20 (1976) and *Warth v. Seldin*, 422 U.S. 490, 502 (1975), the Court found lack of standing where the plaintiffs had alleged "that injury has been suffered by other, *unidentified* members of the class" (emphasis added). Those cases are distinguishable from the proceeding below, in which there was evidence of actual injury by individual class members who testified before the District Court. (487 F. Supp. at 932, Pet. App. 58). As this question was accurately disposed of below, there is no need for this Court's further review.

D.

Petitioners present for review the question of whether or not a prison official who witnessed or was involved in an investigation of the acts complained of should be disqualified from being a member of the disciplinary panel hearing such charges. Petitioners contend that this limitation on the hearing panel is not warranted by *Wolff* or by the facts of this case.

Petitioners failed to raise this question for consideration by the Court of Appeals, either in their appeal of the 1975 Order

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* This provision is especially necessary at the Bedford Hills prison, at which approximately 20% of the prisoners are Spanish-speaking. (1979 Tr. 288, testimony of Superintendent Curry.) Note that petitioners have made no claim that to provide translated notices would cause any undue hardship. (487 F. Supp. at 934, Pet. App. 63).

(542 F.2d at 102, Pet. App. 76), or in their appeal of the 1980 finding of contempt, in which they questioned only whether the evidence of non-compliance was sufficiently clear and convincing to support the relief ordered (643 F.2d at 931, Pet. App. 14).* As this question is presented for the first time in the petition for a writ of certiorari, review should be denied. *Adickes v. Kress & Co., supra; United States v. Ortiz, supra; Tyrrell v. District of Columbia, supra.*

Even had this question been presented in the record, it would not be one that would merit this Court's review, as it is in harmony with both *Wolff* and well established due process standards. In *Wolff*, the majority opinion did not specify any criteria for impartiality but noted, (418 U.S. at 572, n.20), the Court of Appeals' ruling on the issue:

> An impartial hearing board has been required, to the extent that *a member of the board may not participate in a case as an investigating or reviewing officer or be a witness.* (Emphasis added).

citing *Clutchette v. Procunier,* 497 F.2d 809 (9th Cir. 1974); *Braxton v. Carlson,* 483 F.2d 933 (3d Cir. 1973); *United States ex rel. Miller v. Twomey,* 479 F.2d 701 (7th Cir. 1973). Justices Marshall and Brennan concurred with the majority on this issue and stated: ". . . due process is satisfied *as long as no member of the disciplinary board has been involved in the investigation or prosecution of the particular case.*" (Emphasis added). *Wolff v. McDonnell,* 418 U.S. at 592.

It is standard administrative law that actual bias need not be shown to exclude someone involved in a case, either as witness or investigator, from the role of decision-maker. *Morrissey v. Brewer,* 408 U.S. 471, at 485-486 (1972); *Goldberg v. Kelly,* 397 U.S. 254, at 267-271 (1970). Respondents submit that the question, not presented below, is supported by the record and is in harmony with the decisions of this Court.

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* The "questions presented" by petitioners in their lower Court appeals are appended hereto.

Conclusion

For the Foregoing Reasons, The Petition For a Writ of Certiorari Should Be Denied.

Respectfully submitted,

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Dated: Bronx, New York
July 30, 1981

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-2107

ELIZABETH POWELL, DALREE MAPP, KATHERINE PURRINGTON, ALTHEA MCDANIELS, PAULA HERBERT, CYNDI REED, and MARGARET GATLING, on behalf of themselves and all other similarly situated,

Plaintiffs-Appellees,

—against—

BENJAMIN WARD, Commissioner of Correctional Services and JANICE WARNE, individually, and as Superintendent of Bedford Hills Correctional Facility,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLANTS

Questions Presented

1. When a correctional employee responsible for the general security of a correctional facility has no prior knowledge of or connection with the misconduct with which an inmate is charged, must the employee be disqualified from sitting on the disciplinary panel solely because the charged misconduct purportedly threatens the facility's security?

2. Should the order of the District Court requiring that all inmates placed in segregated confinement receive their hearings within seven days be modified to allow relaxation of this rule in exigent circumstances?

* * *

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 80-2141

ELIZABETH POWELL, DALREE MAPP, KATHERINE PURRINGTON, ALTHEA MCDANIELS, PAULA HERBERT, CYNDI REED, and MARGARET GATLING, on Behalf of Themselves and all Others Similarly Situated,

Plaintiffs-Appellees-Cross Appellants,

—against—

BENJAMIN WARD, individually and as Commissioner of Correctional Services, JANICE WARNE, individually and as Superintendent of Bedford Hills Correctional Facility, and PHYLLIS JOAN CURRY, individually and as Superintendent of Bedford Hills Correctional Facility,

Defendants-Appellants-Cross Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLANTS-CROSS APPELLEES

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* * *

Questions Presented

1. Does the April 29, 1980 Order fairly interpret the June 23, 1975 Order in the following respects?

a. Do the procedural rights afforded inmates facing disciplinary proceedings that "may result" in confinement in a "Special Housing Unit or Segregation Unit" under the June 23, 1975 Order (¶ 1, A. 262) extend to all Adjustment Committee proceedings regardless of disposition and/or to those Adjustment Committee proceedings which "place" inmates in Special Housing or Segregation subject to Superintendent's Proceedings where full procedural rights are provided?

* * *

b. Does the requirement of formal written notice of the charges with specifications 24 hours in advance of hearing (June 23, 1975 Order ¶ 1[a], A. 262) extend to all Adjustment Committee proceedings in addition to Superintendent's Proceedings which administratively determine confinement in Special Housing or segregation among other serious penalties?

* * *

c. Does an inmate's right to call witnesses on her behalf absent a threat to institutional safety or correctional goals and to written notice of that right (June 23, 1975 Order ¶¶ [b], 1[c], A. 262-63) extend to all Adjustment Committee proceedings in addition to Superintendent's Proceedings?

* * *

d. Does an inmate's right to call witnesses on her own behalf absent a threat to institutional safety or correctional goals (June 23, 1975 Order ¶¶ 1[b], 1[c], A. 262-63) include the right to be present during the witness' testimony or to hear that testimony prior to the conclusion of the hearing absent such a threat?

* * *

e. Does an inmate's right to receive a written statement of the evidence relied on and reasons for the action taken at the conclusion of the hearing (June 23, 1975 Order ¶ 1[d], A. 263)

extend to all Adjustment Committee proceedings in addition to Superintendent's Proceedings and were the statements provided inmates following Superintendent's Proceedings timely and adequate under the terms of the June 23, 1975 Order?

* * *

f. Does the requirement that a hearing officer refrain from "investigating" the facts in any proceeding before him (June 23, 1975 Order ¶ 1[e], A. 263) extend to all Adjustment Committee proceedings regardless of disposition and/or to those Adjustment Committee proceedings which "place" inmates in Special Housing or Segregation subject to Superintendent's Proceedings?

* * *

g. Is the district court's finding that hearing officers at Superintendent's Proceedings conducted "investigations" in violation of ¶ 1(e) of the June 23, 1975 Order (A. 263) clearly erroneous?

* * *

h. Does an inmate's right to have the due process hearing which adjudicates the basis for an appropriateness of his confinement in Special Housing or Segregation Unit within seven days of such confinement (June 23, 1975 Order ¶ 2, A. 263[*] subsume the right to have that hearing commenced and completed within seven days?

* * *

2. Did Superintendent Curry's conduct constitute civil contempt of the June 23, 1975 Order given that her interpretation of the Order fairly conformed with its terms and was consistent with the interpretation offered by her staff, and her counsel and with the practices of her predecessors and given that she diligently sought compliance with the Order as she understood it once informed of its existence?

* * *

3. Did a prior judgment obtained by inmate Santana in a proceeding under Article 78 of the New York Civil Practice Law and Rules preclude her from relitigating the same events in the district court and preclude the district court from relying on those events as evidence of non-compliance with June 23, 1975 Order and as a basis for individual and class relief?

* * *

4. Was there sufficient evidence to support the district court's amendment of the June 23, 1975 Order ¶ 1(c) (A. 443) to mandate notices in Spanish and translators at hearings for inmates who cannot read and understand English?

* * *

5. Was the award of damages to the class, the appointment of a Special Master and the expungement of all Adjustment Committee proceedings for the period June 24, 1977 through April 29, 1980 warranted?

* * *

(Emphasis added to the question which has also been presented by this Petition.)